

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **VICE CHAIRMAN CAROL C. JUNEAU**, on March 10, 2005 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Carol C. Juneau, Vice Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Verdell Jackson (R)
Rep. Joey Jayne (D)
Rep. Christine Kaufmann (D)
Rep. Ralph L. Lenhart (D)
Rep. Walter McNutt (R)
Rep. Penny Morgan (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. John Sinrud (R)

Members Excused: Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Bill E. Glaser (R)
Rep. Jon C. Sesso (D)
Rep. Janna Taylor (R)

Members Absent: Rep. Jack Wells (R)

Staff Present: Marcy McLean, Committee Secretary
Jon Moe, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: 470, 3/7/2005; 628, 3/7/2005; 672,
3/7/2005; 687, 3/7/2005; 700,
3/7/2005; 704, 3/7/2005; 695,
3/7/2005

HEARING ON HB 470**Opening Statement by Sponsor:**

REP. PAUL CLARK, HD 13, Trout Creek, opened the hearing on **HB 470**, a bill to require applicants to pay for preparation of environmental impact Statements(EIS). He said that the Department of Natural Resources and Conservation worked with people in the mining industry and developed HB 470; industry has a vested interest in the EIS process and is willing to pay the fees, and this is not a new idea. It is difficult to estimate the DEQ's expenses, since costs for EISs could be left unpaid when they are not accounted for in advance. They have estimated these annual costs to DEQ to be \$250,000 of State special revenue.

EXHIBIT(aph53a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4; Comments: Rep. Wells entered hearing}

Proponents' Testimony:

Tom Livers, DEQ, said that HB 13 is a piece of DEQ's larger decision package totaling \$2.5 million. He said that through consensus with the industry they arrived at the language in HB 13; they are asking for State special revenue spending authority so that if EIS applications come in, they have the authority to accept the funds from the applicant and to spend them. If there are disagreements on the cost of the EIS, there is an appeal process where DEQ pays 25%, in order to hold them accountable.

Michael Kakuk, Western Environmental Trade Association, Montana Contractors Association, said that HB 13 is supported by both the DEQ and the industry.

Bud Clinch, Montana Coal Council, said that the five operating coal mines in Montana have a vested interest in the EIS process. They were part of the consensus process and support HB 13.

Ed Bartlett, Golden Sunlight Mines, thanked the DEQ for their efforts to bring the parties together to reach consensus.

Opponents' Testimony: None

Closing by Sponsor:

REP. CLARK said that the opponents and proponents of this bill have worked together to arrive at consensus.

{Tape: 1; Side: A; Approx. Time Counter: 4.0 - 16.1}

HEARING ON HB 628

Opening Statement by Sponsor:

REP. PAUL CLARK, HD 13, Trout Creek, opened the hearing on **HB 628**, a bill requiring registration and board duties for certain alternative schools and programs. It would establish a self-funded board of private, alternative, adolescent, residential programs, and it is the first attempt by the State of Montana to regulate these schools. The schools did not want to be on the defensive regarding regulation, so therefore, they pro-actively came forth with HB 628. The programs would pay fees to pay for this oversight board. All programs would be registered through the board, and the board would report to the legislature on the need for any additional regulation.

{Tape: 1; Side: A; Approx. Time Counter: 16.1 - 18; Comments: Chairman Buzzas entered hearing}

Proponents' Testimony:

SEN. JIM ELLIOT said that he has encouraged these school programs to pursue self-regulation. The purpose of these programs is to take care of troubled children, and helping them to turn their lives around. In the past, the idea of regulation has caused a turf war with the Department of Public Health and Human Services (DPHHS). His bill requires that the registration be done through the Department of Labor (DOL).

Penny James said that for the past 15 years she has been a teacher in these programs, and serves on the national board of National Association of Therapeutic Schools and Programs. This board provides regulation, principals of good practice and an ethical code for these programs. Since 1990, she said that she and her husband have worked with over 100 children in their program. The programs agree that they can collaborate and agree on standards. They believe that a self-regulatory board can best serve their interests, because they are the best ones to understand their industry. Of the 11 programs in Montana, representatives from three of them serve on the national board.

Ramsey Riddell, daughter of Penny James, said that her parents own the Explorations School. She said that she is happy to see the students succeed and move on in their lives.

Rachel Romano said that as a teenager her life had spiraled out of control. Her parents put her in Spring Creek Lodge for 22

months, where she learned self-awareness, confidence and self-respect. She said that the program was peer-regulated; a student did not advance unless their peers truly believed in what they were saying. She graduated from Spring Creek in 2000, and since then has graduated from Georgetown University with a degree in English. She said that Spring Creek did for her what no other program was able to do, which is common with most of the students there. She said that many of the students have gone on to lead successful and productive lives.

{Tape: 1; Side: A; Approx. Time Counter: 18 - 32.6; Comments: End of Side A}

Deanna Marie Sancher, Explorations, said that she has been in four programs over the past three years. The current program she is in has taught her to fill her void with new and healthy habits. This program addresses the diverse needs of the students. She had it was taught her to be a successful young adult.

Randy Lovell, Spring Creek doctor, said that his daughter, Emily Lovell, graduated from Spring Creek two years ago, and it taught her to be a good student. The program works to fix the parents, too.

Brandee Della Silva, said that at age 15 she was sent to Spring Creek because she was headed down a self-destructive path. She said that at Spring Creek she learned self-respect and was brought closer to her parents. She said that she gives anti-drug talks to high schools.

Kenny Pannell and Mary Alexine, owners of Chrysalis, said that they are professional counselors and owners of a school program. He said that they value education, adventure, relationships, and spirituality. She said that the program gives the girls a solid sense of who they are and what the meaning of their lives are. He said that HB 628 gives them the opportunity to continue their creative and innovative work.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 14.9}

Erich Schutz, said that he attends Twenty Peaks Ranch. He went there because he life was on a downhill slide, and at age 16 had three felonies. He said the wilderness program is very strict and it caused him to become more motivated. He is a senior at Thompson Falls High School, where he has brought his grade point average up to 3.5%

Stephani White, said that she has been at the Chrysalis School for 18 months and it has turned her life around.

Patrick McKenna, Monarch School, said that HB 628 can save lives. He said that the self-regulating board can set good standards, with public input to keep the programs safe. He said that the programs are willing to pay their own way so that the cost is not put on the taxpayers. He said that these programs are for students who have not succeeded in a public setting.

(Due to lack of time, the following Proponents stood and Stated their name.)

Laura Jones

Christina Johnson

Ranel Hanson

John Akers

Ron Mendenhall

Leslie Fowler

Rachel Berlin-Allaire

Darya Brutoco

Camara Hampton

Lydia Manley

Tom Stack

Meghan Loeur

Mike Chism

Victoria Hampton

Marilyn Frields

Emily Lovell

Mickey Manning

Opponents' Testimony: None

Informational Testimony:

Mary Dalton, Quality Assurance Division, DPHHS, said that they currently license 380 residential facilities, 561 health care facilities and 1,629 child day care providers. She that although DPHHS prefers SB 101, they see the need for one of these bills to go forward is because of their concern for the children. She said that industry needs to have some State oversight.

EXHIBIT(aph53a02)

Lisa Addington, Health Care Licensing Bureau, DOL, said that her department prepared the Fiscal Note.

Questions from Committee Members and Responses:

REP. MORGAN said that in regard to the Fiscal Note, the technical notes said that it does not include homes for the developmentally disabled; however, the language in HB 628 could be construed to include those homes. She asked if there needed to be an amendment to clarify this.

REP. CLARK said that he would consider a friendly amendment. He said that the bill States which programs are not included. **REP. WINDHAM** added the amendment to exclude "an organization, boarding school or residential school that is an adjunct ministry of a church incorporated in the State of Montana."

Mary Dalton, DPHHS, said that an amendment to exclude homes for the developmentally disabled is a good idea. The clearest

language would be to exclude any facility already licensed under the DPHHS.

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 32.6; Comments: End Tape 1}

REP. KAUFMANN said she does not question the effectiveness of the schools, but asked if they are accredited and if they receive State funds. **REP. CLARK** answered that these are all private programs. They are not accredited through the State of Montana, but are through other accrediting organizations, such as Pacific Northwest Association of Independent Schools.

REP. KAUFMANN asked why these programs prefer to be licensed under DOL rather than DPHHS. **REP. CLARK** said that HB 628 would not have come forward if DPHHS had not initiated a bill to license and control these programs. Originally, the department had told **REP. CLARK** and **SEN. ELLIOTT** that they were not going to introduce a bill to require licensing of these schools. The schools feel that they do not fit under the model of the State-run programs. They believe they can hold themselves accountable and can achieve high standards with a board.

REP. JAYNE asked what SB 101 is. **Mary Dalton** said that SB 101 requires registration and establishes a working group to prepare recommendations to the 2007 legislature for licensing these programs; the legislature would then have to decide if they agree with the recommendation. She said that she thinks both SB 101 and HB 628 should go forward and then the legislature could decide which model they prefer.

REP. KAUFMANN asked how other States regulate these programs. **Mary Dalton** said that searching via the Internet, they have not found any other States that use a board to regulate these programs, since boards usually test and license professionals. Generally, facilities are licensed by the equivalent of our DPHHS. It becomes difficult when you try to "test" a facility; they need to be inspected.

REP. KAUFMANN asked if regulating these programs could be compared to regulating child care, which is paid for by the providers. **Mary Dalton** said that they license child care and elder care providers, and they are mostly private pay facilities. The DPHHS sees their role of licensing to go beyond State-funded facilities in order to protect the health and safety of the public.

REP. KAUFMANN said that she is concerned about the religious exemption that was added to the bill, and asked about DPHHS' involvement with religious-based facilities. **Mary Dalton** said

that she, too, is concerned about the exemption in the bill. She said that many of the worst outcomes in other States have occurred in religious-based facilities. She said she would encourage the Committee to not exempt them during the study period and then make a decision about licensing based upon the study recommendation.

REP. JUNEAU asked about the schooling provided to these students, and what the annual cost was to the parents. **REP. CLARK** said that some of the programs have their own schools and some send the students to the local high school. The tuition fees would be disclosed in the registration process, but he estimates the monthly fee would be approximately \$2,000-\$3,500. He pointed out that a medical-model treatment center would be outrageously higher. Scholarships are provided to some of the students.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 13.3}

CHAIRMAN BUZZAS said she appreciates the work these groups are doing. She asked if these programs advertise as residential treatment centers. **REP. CLARK** said that few of them advertise as treatment centers. Most of their work is counseling, not therapy, and providing schooling. Some of them are outdoor wilderness programs, and some are for drug and alcohol counseling.

CHAIRMAN BUZZAS said that it had been Stated that they are resisting licensing through the DPHHS because of the diversity of their programs. She asked what was so diverse. **REP. CLARK** said that they have a tremendous amount of activities and diversity in their programs. They do not want to have to explain this diversity to the DPHHS under their standard model. He said that they do not believe that the DPHHS's large department does not have the flexibility to deal with this diversity. He said that distrust has developed between DPHHS and these schools.

CHAIRMAN BUZZAS asked about Fiscal Note 4, referring to "research and data gathering", and Fiscal Note 6, the gathering of data. **Lisa Addington, DOL**, said she wasn't quite certain what this board would do, but some of the other boards direct the DOL to gather information from the facilities they license. As an example, the Board of Dentists directs them to talk to practitioners, gather information and share with the Board. Then board then uses this information to draft administrative rules. She said that this board established in HB 628 would instruct the DOL to conduct surveys. She said that if the legislature has given this board has the statutory authority to assess the programs, then the DOL would do that. If the DOL is expected to inspect these programs, then they will need to have legislative authority to do so.

CHAIRMAN BUZZAS asked if licensing of these programs through the DPHHS would be different from how DOL just answered. **Mary Dalton** said that under both HB 628 and SB 101, the DPHHS would not have the authority to assess programs over the next two years; they would just be registering the programs. When a facility is licensed through the DPHHS, they develop rules, in conjunction with the providers, to license them for one to three years. The standards for licensing are far ranging. As an example, you have to have so many square feet of space of per child, bathrooms based upon the number of children, etc. They also review the qualifications of people that are working with the children. For instance, if the facility is advertising that they do addiction counseling, then they have to have licensed addiction counselors. She said that she viewed these private alternative adolescent residential programs to be similar to group homes.

CHAIRMAN BUZZAS asked how many of these programs are in Montana. **Mary Dalton** said they think there are approximately 36-38 programs that they know of.

Closing by Sponsor:

REP. CLARK said that he has prepared amendments to HB 628, to instruct the board to examine the quality of child care, any existing programs that need improvement and the positive or negative interactions with local communities. If it is determined that licensing is a benefit to these programs, then they support it.

{Tape: 2; Side: A; Approx. Time Counter: 13.3 - 32.6; Comments: End of Side A}

He said that the DPHHS is not the ultimate authority on these programs. The National Association of Therapeutic Schools and Programs has set acceptable standards for these types of programs. He said it will be very important to develop cooperation and trust between this board and the DPHHS, as well as the DOL. He said that the religious exemption that was added to the bill is not talking about the generic faith-based terminology; it is not referring to church summer camp or Boy Scouts.

REP. CLARK emphasized that he means no disrespect to the DPHHS. He said that they are going the best job they can with an organization of the size they are dealing with. He said that in this case, the private sector can do a good job of regulating themselves.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 2}

HEARING ON HB 672**Opening Statement by Sponsor:**

REP. EDWARD BUTCHER, HD 29, Winifred, opened the hearing on **HB 672**, a bill to allow a school to transfer the unreserved general fund balance to their flexibility fund. He said that school personnel requested HB 672 in order to provide stability to their budgets. It's difficult for schools to budget for utilities and for repairs, as there can be many unknowns. Many times they budget for the worst case scenario, and when that does not happen, they are left with a balance that gets transferred back to the State's general fund. HB 672 would allow them to transfer up to 10% of that money into their flexibility fund for facility repair and maintenance.

Proponents' Testimony:

Linda Brannon, Montana Association of School Business Officials, said that their organization recommended HB 672 as a way to help schools. To establish a flex fund, the school must receive voter approval. She said that this bill will encourage school districts to save money. Under the current system, if schools do not spend all of their budget, then they lose it. This legislation will allow schools to pay for the unplanned emergencies.

EXHIBIT (aph53a03)

{Tape: 2; Side: B; Approx. Time Counter: 2 - 13.8}

Lance Melton, Montana School Boards Association, said that they believe that there is a dysfunctional relationship between school efficiency and reliance on the State on inefficiency. The State budget relies on schools returning unused funds, which is approximately \$7 million per year. He said that if a school district saves money, it goes back to the State and reduces the amount of aid the State provides to schools. HB 672 allows schools to keep some of the unused funds for deferred maintenance, thereby reducing dependence on local taxpayers.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. MUSGROVE asked if this will get rid of a school's year-end spending frenzy. **REP. BUTCHER** said that he thinks it will help to diminish that. He also added that there was no opposition in the House Education Committee.

REP. JUNEAU said that the technical notes State that the money will be used for repair and maintenance, yet the bill does not specify that. **REP. BUTCHER** said the bill drafter left that open because there would be technical problems in restricting use of the funds to just repair and maintenance. **Lance Melton** said that the flex fund was set up to mirror general fund expenditures. Therefore, it was too confusing to restrict these funds to only be used for a specific reason. He said that he thinks HB 628 conveys to school districts clear guidance that the money is to be used for facility repair and maintenance.

REP. JUNEAU said that since the State school funding has not yet been decided, would some school districts hold this money for maintenance when it should have been used for legitimate school issues. **REP. BUTCHER** said that is a possibility, but he has faith in local control of School Boards.

CHAIRMAN BUZZAS said that she is concerned about schools using this as part of their budgeting process, and would these funds be used in place of doing building reserve bonds. She asked if there is a limit on the flex funds. **Lance Melton** said the flex fund can receive savings from the Average Number Belonging (ANB) funds. Once the State has provided money to be placed into the flex fund, the school district can go above that by 25% by using a local levy.

Closing by Sponsor:

REP. BUTCHER said that from a fiscal point, this legislation would curb the frenzied year-end spending, and encourage better management of funds.

{Tape: 2; Side: B; Approx. Time Counter: 13.8 - 32.6; Comments: End of Tape 2}

HEARING ON HB 687

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL, HD 77, Boulder, opened the hearing on **HB 687**, a bill to revise laws governing the sale of tobacco. He said that even though the bill has a zero fiscal note, it is in Appropriations because it is in the Department of Revenue's budget. He said that there is an amendment to change the penalties to decrease from \$1,000 to \$100. He said that the unattended consequence of the recently enacted tobacco tax is that unscrupulous people are selling tobacco products via the Internet in order to avoid the tax. This bill would ensure that

the legitimate Montana businesses that are following the rules, are not penalized.

Proponents' Testimony:

Neil Peterson, Department of Revenue (DOR), said that in order for them to go after unscrupulous sellers of tobacco, they need enhanced reporting and enforcement tools.

[EXHIBIT \(aph53a04\)](#)

[EXHIBIT \(aph53a05\)](#)

He said that in the DOR's decision package 311 there are funds for tobacco use prevention; these funds also provide \$382,000 for enforcement. There would be two FTEs in the Department of Justice (DOJ) and four FTEs in the DOR to work on enforcement. He said that while HB 687 provides enhanced enforcement tools, the additional staff is funded through HB 2. If HB 687 passes and the funding in HB 2 is eliminated, the DOR will have to determine how to cover their expenses.

The DOR's compliance staff would be conducting audits and investigations of Internet sales of tobacco sales in Montana. They would also audit retailers and wholesalers, to ensure that all of the cigarettes being sold bear the Montana tax insignia. The DOJ's compliance staff also would be conducting investigations, generally in conjunction with gambling or liquor investigations.

Chris Tweeten, DOJ, said that their department has the responsibility for enforcing the tobacco tax, and responsibility for enforcing the State's responsibilities under the Tobacco Master Settlement Agreement. Under this settlement, the State has the responsibility to make sure tobacco companies that are not a part of the agreement do not take advantage of the situation. The DOJ's enforcement will be enhanced by working with the DOR. This bill will make the DOR's enforcement more consistent with the DOJ's.

Jim Ahearns, Alliance for a Healthy Montana, said they support HB 687.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. MORGAN asked how the DOR will enforce the illegal Internet sales. **Neil Peterson** said that bill States that the seller of tobacco products, they need to register as a wholesaler and prepay the tobacco tax. Sections two and three of the bill

provide for serving action against these sellers, and section four provides for holding the owner of the business liable for the illegal action. He said that the DOR staff will attempt to place cigarette orders via the Internet sites, and they will ask credit card companies to not honor these illegal sites.

REP. MORGAN asked how these companies will know we have this new law. **Neil Peterson** said that all states require taxing of tobacco products, and ignorance is not an excuse.

Closing by Sponsor:

REP. MENDENHALL said that I-149, the tobacco tax initiative, passed and the unintended consequence is that there is a greater probability of untaxed cigarettes being sold in Montana.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 26.3}

HEARING ON HB 700

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL, HD 77, Boulder, opened the hearing on **HB 700**, a bill to revise allocation and use of the metal mines license tax. A few years ago,, the State and counties reached an agreement in which 1% of the proceeds was moved from the counties to the State. This change was to support functions at the Department of Commerce as related to the Hard Rock Mining Board. Due to the decrease in mining, the tax had decreased to a point at which they were unable to support these functions. Since the counties are the beneficiaries of these functions, they have agreed to the 1% shift. HB 700 would return the metal mines license tax to the 75% State and 25% counties.

Proponents' Testimony:

Harold Blattie, Montana Association of Counties, said that they support HB 77, as it has been rewritten. He pointed out that Fiscal Note #2 reduces the General Fund by \$92,000 in FY06 and \$95,000 in FY07. Yet when tied to the revenue estimate, those dollars are coming out of a projected increase in the revenue source; the FY04 to FY05 increase is \$964,129, in FY05 to FY06 is \$676,000, and in FY06 to FY07 is \$421,000.

{Tape: 3; Side: A; Approx. Time Counter: 26.3 - 32.6; Comments: End of Side A, Tape 3}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. MENDENHALL said that mining has a huge ebb and flow that drastically affects the counties where they are located. The legislature enacted this tax many years ago to help mitigate the impact when the mines cease operation. The 1% shift in the tax to the State is to help fund the State's responsibility in dealing with these impacts.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.7}

HEARING ON HB 704**Opening Statement by Sponsor:**

REP. JONATHAN WINDY BOY, HD 32, Fort Belknap, opened the hearing on **HB 704**, a bill to set time requirements for certain DPHHS actions involving long-term care facilities. He said that DPHHS inspects all nursing homes at least once a year, called a "survey." Federal guidelines require the State to provide the survey results to the nursing homes within 10 working days. If a facility disagrees with the survey findings, then the State is required to offer the nursing home a dispute resolution process. DPHHS is not meeting the 10-day requirement for survey results and is taking four to five months to notify facilities of dispute resolution results.

EXHIBIT (aph53a06)

Proponents' Testimony:

Rose Hughes, Montana Health Care Association, said that **HB 704** would require the DPHHS to meet the 10-day requirement for survey results, and that results from an informal dispute resolution be provided within 45 days. She said that the survey is extremely important to facilities, and unresolved issues can negatively affect them.

She said that they had not anticipated that there would be any financial impact to DPHHS from **HB 704**. She said that the 10-day time limits should always have been met, and they don't understand why the department would need two new FTEs, although additional staff would probably improve the quality of the surveys. In regard to the bill requiring results from the informal dispute resolution being provided in 45 days, she said that they did anticipate there would be a request for additional staff.

EXHIBIT (aph53a07)

Casey Blumenthal, Montana Hospital Association, said that when issues are raised in the survey, the facility is required to implement a plan of corrections, regardless of whether the deficiencies are eventually overturned. This can be a costly process. She said that they support the DPHHS having the appropriate staff to handle this legislation, but do not know what that number should be.

Opponents' Testimony: None

Informational Testimony:

Mary Dalton, Quality Assurance Division, DPHHS, explained that nursing home surveys are mandated by the federal government, and they do 468 surveys per year. These surveys can be very in-depth and they would not be able to meet the new deadlines without additional staff. This additional staff would be funded at 12.5% from the State General Fund and 87.5% from federal funds.

In regard to dispute resolution, current State law is that they make a legally sufficient decision. A nursing facility can request this dispute resolution if they disagree with the DPHHS findings. These hearings can be quite complex and often involve multiple issues that must be decided. She said that each issue may require research into federal and State regulations, nursing home industry standards and medical standards of practice.

The survey form contains information about any deficient practices that were found when the DPHHS performed an on-site inspection of the nursing facility. This form must be posted at the nursing facility and be available for public review. The accuracy is critical to both providers and the DPHHS. Currently, 10-16% of the surveys are taking more than 10 days to complete. This delay has the least impact to the consumers and to the providers. When having to decide between accuracy and timeliness, she said that she would always choose accuracy.

EXHIBIT (aph53a08)

{Tape: 3; Side: B; Approx. Time Counter: 4.7 - 23}

Questions from Committee Members and Responses:

REP. MORGAN asked about penalties imposed by the federal government for surveys being late. **Mary Dalton** said that has occurred once and the penalty was \$11,000. She said that this is the first year that the federal government has begun to impose these fines.

REP. MORGAN said that if the federal government is going to continue to impose fines, then perhaps the fiscal note could be decreased by the amount of money that they will save by avoiding these fines. **Mary Dalton** said that wouldn't work because the fines mean there is a lack of federal funding, but they still need to do the 486 surveys per year. **Jon Moe, Legislative Fiscal Division**, explained that the additional FTEs would help to avoid the federal fines. He said that it would be difficult to include these in the fiscal note because it would be difficult to predict. **REP. SESSO** explained that fine avoidance would mean there are more federal funds available. **REP. WELLS** said that it would be difficult to estimate the fine savings because you would need to make a mathematical calculation of how many times you anticipate being fined versus how many times you would be successful.

{Tape: 3; Side: B; Approx. Time Counter: 23 - 32.6; Comments: End of Tape 3}

REP. JUNEAU asked if every survey results in a dispute resolution. **Mary Dalton** said "no," but it is becoming more of an insurance issue. They are now doing 68 dispute resolutions per year.

Closing by Sponsor:

REP. WINDY BOY said that he realizes that there are always two sides to an issue. He said that we are going to see more fines being imposed by the federal government, and HB 704 could be a cost saving measure.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 3.3}

HEARING ON HB 695

Opening Statement by Sponsor:

REP. JOEY JAYNE, HD 15, Arlee, opened the hearing on **HB 695**, a bill to fund representation for indigent victims of domestic violence. She said that the \$400,000 appropriation is to help people who have no money with civil legal assistance. There are 14,556 people in Montana who are directly impacted by domestic and sexual violence. Currently, the only funding from the State is \$80,000 per year from the General Fund. This is paid for by a \$9 fee imposed on petitions for dissolution of marriage. The Montana Legal Services is the recipient of this \$80,000, and there remaining funding comes from the federal government. The federal funding will be depleted in 20 days, March 30, 2005, and there will be no more federal funds for this purpose. Many of the victims are of all ages and financial background; those with

financial resources may have become indigent because they have no control over their joint finances. She said that the \$400,000 is a one-time request. Montana Legal Services will use the money until they can secure other sources of funding.

Proponents' Testimony:

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, said that changes in federal funding will leave 44 Montana counties with a substantial loss of access to free civil legal assistance to victims of domestic violence. She said that legal assistance is a critical service for domestic violence victims because many abusers use finances to keep control over their victims. Without legal representation, victims are more likely to be re-victimized in the courts with devastating consequences, such as loss of custody of their children. Without legal representation, they also are at risk of not being able to get restraining orders, which can be a matter of life or death. She said that HB 695 would provide bridge money until they can find other funds to offset the loss of federal funds.

{Tape: 4; Side: A; Approx. Time Counter: 3.3 - 11.4}

Klaus Sitte, Montana Legal Services, said that they have been the only legal services provider for low-income Montanans for the past 40 years; they never before asked the legislature for funding. The \$80,000 of General Fund money they receive is from a \$9 user fee assessed to divorce resolutions, and obtained through a grant application. Seven years ago they began receiving an annual grant of \$250,000 from the federal Violence Against Women Act, but that is now ending as of 3/30/05. The \$400,000 appropriation they are requesting in HB 695 is for the personnel needed to continue to provide this service. Their typical client is low-income, with one child, who is earning less than \$16,000 per year. These people do not have the money to pay for legal services. The appropriation would be a stopgap measure until Montana Legal Services can find other sources of funding. He said that the State should have an interest in these low-income clients having access to the courts.

Amy Hall, Montana Legal Services, said that they employ 5 FTE lawyers and 1.5 FTE paralegals, in Butte, Helena, Missoula, Bozeman, and Great Falls. Up until September 2004, they also had legal staff in Billings and Miles City; those positions were lost due to a loss of federal funding. She said that often times these victims are isolated from their family funds by their abuser, and cannot afford legal services. This can cause them to have to stay with their abuser longer. She said that private attorneys provide substantial pro bono support throughout Montana, especially in Helena, but it is not enough. In eastern

Montana, due to a lack of attorneys and conflict of interest, there is a shortage of pro bono services. Studies have shown that when considering all services provided to victims of domestic and sexual violence, access to an attorney is the only service that decreases the chances of a person being abused. She said that they currently have no other funding sources. Because access to legal assistance is so important to survivors of domestic and sexual violence, they are asking the State for money. If they are not able to replace the lost federal funding, then they will have to reduce their staff to just two attorneys and one paralegal to serve the entire population of Montana.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. WELLS asked if eligible clients are only women. **REP. JAYNE** said that males are also eligible to receive the services.

Closing by Sponsor:

REP. JAYNE said that the Committee is going to be faced with some tough financial decisions in the next 30 days. Victims of domestic violence would appreciate some funding; they acknowledge they may not receive the full request, but would like the State to consider funding some of the request.

{Tape: 4; Side: A; Approx. Time Counter: 11.4 - 25.7}

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. ROSALIE (ROSIE) BUZZAS, Chairman

MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

EXHIBIT ([aph53aad0.PDF](#))